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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO.1122 OF 2023
(ARISING FROM CIVIL SUIT NO.319 OF 2016)

AJUNA JACKSON FRANCIS] **APPLICANT**

VERSUS

ATTORNEY GENERAL] **RESPONDENT**

Before: Hon. Justice Ocaya Thomas O.R

RULING

Introduction:

This application was brought by way of Chamber Summons under Sections 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act, Cap 71, Order 6 Rules 4, 19 and 31 of the Civil Procedure Rules, SI 71-1 seeking the following orders:

(1) That the Applicant/Plaintiff be granted leave to amend the plaint vide HCCS No. 0319 of 2016 and other consequential amendments to the plaint.

(2) Costs of this application be provided in the cause.

The Applicant/Plaintiff commenced Civil Suit 0319 of 2016 in this court against Respondent/Defendant and the same is pending determination [hereinafter “the main suit”].

The crux in the Main suit is the Applicant’s contention that an Agent of the Respondent through the Secretary to the Judiciary approached the Applicant with



5 the intention to rent the Plaintiff's premises on Plot No.8A Mbuya Road, to which the Applicant acted upon the intention and demolished and worked upon the premises as requested and notified the Agents of the Respondent that the premises is ready for occupation which they, the Agents refused to occupy.

10 The Applicant/Plaintiff is now claiming for breach of contract, the recovery of UGX 3,227,157,251/= and damages.

On the 23rd February, 2022, the main suit was dismissed for want of prosecution and the same was reinstated after application to set aside the dismissal and the
15 reinstatement of the main suit for hearing was granted on the 20th of July, 2023.

Representation:

The Applicant was represented by the law firm of M/s Falcon Associated Advocates while the Respondent was represented by The Attorney General's Chambers.

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Evidence and Submissions:

The Applicant led evidence by way of an affidavit deponed by Ajuna Jackson Francis in support of the Chamber Summons. The Respondent equally led evidence by way of an Affidavit in reply deponed by the Brian Musota, a State Attorney in the Attorney
25 General's Chambers.

Both parties filed submissions in support of their respective cases. I have considered all the submissions of the parties before coming to the ruling below, suffice to say that I have not seen the need to reproduce them but shall apply it where necessary below.

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Decision:

The Applicant in paragraph 3 and 4 of his affidavit in support averred that when he instructed his new advocates M/s Falcon Associated Advocates to reinstate the



5 dismissed main suit and upon perusing of the Plaintiff and the annexures attached to the original plaintiff, they informed him that they deem it fit to amend the Plaintiff for purposes of pleading material facts, attaching supporting documents and also rephrasing the prayers such that court (can) determine the real questions of controversy and the matter in contention.

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The Applicant attached the proposed amended plaintiff which he contends to have clearly stipulated and corrected the deemed defects in the original plaintiff.

The Respondent in rejoinder argued that the Applicant had the opportunity to seek
15 leave to amend the Plaintiff when Misc. Application No. 689 of 2022 for reinstatement of the suit was filed and that the Respondent is prejudiced by the continued delay of hearing of the matter at the instance of the Applicant and the same deserves to be dismissed. Further that in the alternative, if this honorable Court is inclined to allow the application, costs should be awarded to the Respondent.

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Counsel for the Applicant submitted that the original plaintiff as drafted by the former advocates of the Applicant did not plead some material facts, left out important documents supporting and proving the Plaintiffs case. There is need to rephrase the prayers such that court determines the real questions of controversy and the matter
25 in contention. Counsel cited Article 126(2) e together with the decision in **Banco Arabe Espanol v Bank of Uganda SSCA No. 8 Of 1998** where it was held that mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant.

30 Counsel further detailed the material facts left out as added in the attached proposed amended Plaintiff with the details that; further and better particulars of special damages and the correct sums of money spent on alterations and Constructions is



5 UGX 1,788,065,037/=. Further that the contractor had not been mentioned in the original plaint and that the specifications of the alterations on the premises.

The alteration plans and photographs of the premises before and after alterations were not attached in the Original Plaint and in the statement of claim under
10 paragraph 3 of the Original Plaint, the former lawyers made a general prayer for recovery of an aggregate sum of UGX 3,227,157,251/= without specifying what it is for. In the proposed Plaint the prayers have been rephrased to specify and break down the sums claimed.

15 That the Applicant further seeks to attach supporting documents which were not attached to the Plaint such as Alteration plans, Bills of quantities, the Photographs of the premises before and after alterations, the contract between the contractor and the Plaintiff and Payment receipts.

20 Counsel further submitted that denying the Applicant the grant of an order to Amend the Pleadings would be an injustice as the Applicant would not have gotten the opportunity to have all the issues in contention between the parties finally disposed of by this court on any matter of law because of the inadvertences or errors made by his previous lawyers when some material facts were left out in the
25 Original Plaint and the prayer for special damages not particularized.

Counsel went on to cite the principles for amendment of pleadings as enumerated in the case of **Gasu Transport Services (Bus) Ltd Vs Martin Adala, SCCA. No. 04/1994** and **Eastern Bakery Vs Castelino [1958] EALR 461 AT 461**, together
30 with the laws under which this application was brought.

Counsel for the Respondent submitted in part agreeing with the submissions of the Applicant's counsel except for the crucial part that the main consideration is that no prejudice is caused to the Respondent.

5 Counsel submitted that applying the principles governing amendment of pleadings to the facts of this case whilst taking into consideration of the Affidavit of Brian Musota, which inter alia, stated that the Respondent is prejudiced by the continued delay of hearing of the matter at the instance of the Applicant.

10 That as such, the application to amend should have been filed at the time when the application to reinstate the main suit was filed. The continued delays to hear the suit thus causes prejudice to the Respondent.

Pleadings are formal Written documents entailing the claims of a party or the defense and it is detailed to bring out the facts, evidences and laws being the subject of claims and disputes between the parties for Court's determination.

It therefore binds the parties throughout the course of the litigation. However, Order 6 Rule 19 Provides that; The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

The input is that Amendment of Pleadings is allowed under the principles laid out by this Court already as cited by Counsel for Respondent in the case of by Hon. Justice Richard Wejuli Wabwire in **Space Marketing Uganda Limited versus Equifax Uganda Limited and others Misc. Application No. 969 of 2020**; quoting stated *Mulla, The Code of Civil Procedure, 17th Edition Volume 2, at 140 pages 333, 334 and 335*; stated that, *As a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised on the pleadings, where the amendment will occasion no injury to the opposite party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order.*



5 *Leave to amend must always be granted unless the party applying was acting mala fide and where it is not necessary for determining the real question in controversy between the parties, the Application to amend must be made bona fide and made in good faith.*

10 In this instant case, the Applicant prayed for grant of leave to Amend the Pleadings on the account of pleading material facts which his former Advocates left out without which, he feels the final disposition of this matter shall not be arrived at.

15 Material facts are statements of an event, occurrence or state of affairs possibly known to have happened or not, which must be proved at the trial by a party to establish the existence of a cause of action or the defendant's defense in the written statement of Defense. Therefore, it must not be a false hypothesis of events intended to defeat the course of Justice.

20 It is therefore upon Court in exercising the discretions in Section 98 and 100 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13 to bring into fruition the spirit of Article 126(2)e by being observant in identifying cases that can potentially mutate into other suits or applications creating multiplicity over the same matter.

25 Hon. Justice Richard Wejuli Wabwire in Space Marketing Uganda Limited versus Equifax Uganda Limited (Supra) quoted Tsekooko, JSC as he observed that multiplicity of proceedings should be avoided as far as possible and all amendments which avoid such multiplicity should be allowed

30 The Respondent did not adduce evidence of how the amendment to clarify on the amount claimed plus the purported additional construction works will cause it injustice or affect its defense to the claims made in the original suit as no new issue was raised or was there fundamental departure from the original Pleadings. The reply of the claim of inordinate delay on the part of the Applicant is not the sort of injustice cautioned under order 6 rule 19 of the CPR and the principles of amendment of



5 Pleadings besides, the main suit was reinstated because Court found the need to settle the real dispute between the Parties.

Further, the Proposed Pleading was attached thereby giving the Respondent sufficient time to prepare a reply to the pleadings under Order 6 Rule 24.

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Furthermore, In **AG V AKPM Lutaaya SCCA No. 12 of 2007 Katureebe, JSC** (Chief Justice Emeritus) held that the litigant's interests should not be defeated by the mistakes and lapses of his Counsel. And in **Godfrey Mageze & Brain Mbazira v Sudhir Ruparelia SCCA No. 10 of 2002, Karokora, JSC** held that the omission, mistake or inadvertence of Counsel ought not to be visited on the litigant, leading to the striking out of his appeal thereby denying him Justice.

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In the present case, I believe the Applicant knew the facts of his case and what he purports to be the adequate remedy for his perceived wronging by the Defendant, therefore, it was the work of the previous Advocates being Professionals who possess the necessary training and experience to draft the pleadings in such a manner that details and clarifies for the purpose of Court, all the material facts of the case. I think it goes without saying that the Applicant instructed a new Advocate in this matter.

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Therefore, having perused the Applicant's Application and the affidavits therein as well that of the respondent, I am satisfied that the Applicant has a sufficient cause to amend the original plaint which in effect should help this Court determine with finality the real dispute in the main suit.

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30 This Application is granted.

Ground 2:

This is an appropriate case where the costs of the application out to abide the outcome of the main suit. I so order.



5 **Conclusion:**

In the premises, I make the following orders;

- (a) The Applicant is granted leave to Amend the Plaintiff in HCCS No. 0319 of 2016 as indicated in the draft amended Plaintiff.
- (b) The Applicant has 7 (Seven) days from the date of this Ruling to file and serve the Amended Pleadings in HCCS No. 0319 of 2016 and the Respondent has 15 (Fifteen) days from the date of being served to file a reply.
- (c) The Cost of this Application shall abide the outcome of the main suit.

I so order.

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Delivered electronically this 21st day of November 2023 and uploaded on ECCMIS.



20 **Ocaya Thomas O.R**
Judge,

21st November, 2023